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**VIA ECFS**

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

Re: *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. §160(c) to Accelerate Investment in Broadband and Next-Generation Networks,* WC Docket No. 18-141

Dear Ms. Dortch:

Frontier Communications Corporation ("Frontier") files this *ex parte* to respond to arguments advanced by Granite and other resellers that the Commission must maintain 251(c)(4) avoided cost resale because a theoretical customer prefers TDM service. This argument ignores that (1) Frontier has a shared interest with the reseller in preserving the end user customer and avoiding a competitor that does not utilize Frontier's network winning the business; (2) the Commission has already litigated issues around copper retirement and IP Transition rules; (3) as long as Frontier has not retired copper, these end user customers will continue to have access to TDM services, and (4) ILEC market share and line loss is overwhelming evidence that TDM is not a standalone market. Instead, rather than preserving TDM for some theoretical end user, maintaining the avoided cost discount on resale would only serve to hamper Frontier in competing vigorously on price – because if Frontier attempts to aggressively bundle, price and market its products, companies like Granite can claim a resale discount, and thus prevent Frontier from pricing as aggressively as it would otherwise in competition with cable and wireless.

First, while Granite and other resellers have implied that end users would somehow lose TDM service if forbearance from the avoided cost resale obligation were granted, Frontier has a shared incentive with its wholesale customers, like Granite, to ensure that each wholesale end user remains a happy customer. With vibrant voice and data competition, Frontier and its wholesale customer have a shared risk of losing the end user customers to cable, wireless, fiber-based CLEC, and other competitors. Especially with legacy technologies like TDM, and especially with such extensive competition, forcing a customer to make new decisions, such as by ending their service or migrating to a new carrier, invites the customer to rethink its telecom spend and creates an opportunity for competitors to win the customers. In other words, Frontier continues to have the resale obligation that all LECs have, and it has the shared incentive with resellers to ensure end-user customers purchasing TDM continue to get their TDM service.

Second, the Commission has already decided how to handle the potential (and theoretical) harms end users could face if a carrier transitions away from copper with its copper retirement and IP Transition rules. Forbearing from avoided-cost resale pricing obligations thus does not implicate these concerns. For instance, the Commission has already recognized that 180 days is adequate notice for an ILEC to retire copper. And the Commission has cared for how an ILEC can transition to IP with its IP Transition rules. That is, not only will all end user customers still have access to TDM service the day after forbearance is granted, but also, if their access to TDM service were at risk, the Commission has already decided that a 180-day advance notice period is sufficient for ILECs to retire copper and that ILECs must go the Section 214 discontinuance process if it seeks to discontinue a customer service. The theoretical transition issues raised by Granite et. al are subsumed by these previous Commission decisions.

Third, and relatedly, unless Frontier has deployed IP infrastructure and gone through the copper retirement process (in which case there would be no UNE or resale obligation), the end user customer will have access to TDM. Frontier is not going to turn off facilities where it has customers. Put differently, after forbearance, the end user customer will have access to TDM, whether directly from Frontier or via Frontier's wholesale customer, unless the copper were retired and replacement IP services were offered, in which case avoided cost resale would not be available to the wholesale customer (and all of this argument over avoided cost resale would be a moot point).

Fourth, the suggestion – no matter how well papered and how much expert testimony provided – that TDM is a separate product market belies market realities and common sense. Consumers and businesses continually electing other services over TDM – to where ILEC lines are hovering around 11% – have shown that there are ubiquitous substitutes to voice TDM service. There are no shortage of examples of competition and next-generation IP alternatives to legacy TDM systems, whether it is the fax (a smartphone), an alarm system (Simplisafe, Ring, etc.), or an ATM or Credit Card Machine (Square, Venmo, etc.). These abundant examples, and with 5G technologies around the corner, show that in any example there is an adequate substitute to a TDM system. Often, and in all but the most convoluted hypotheticals, the difference in price between the legacy and the new service is an upfront truck roll, which often pays for itself over time. While Frontier has not engaged in any concerted effort to shift business customers from TDM to IP service, Frontier has seen customers actively pursue IP service – on Frontier's network in the many areas it is available – and from competitors everywhere. Again, Frontier has every incentive, shared with its wholesale customer, to maintain service for these legacy systems as long as customers want them.

Granite et. al have also argued that avoided cost resale is a regulation without a real cost because the discount only reflects the costs that ILECs avoid when selling at wholesale. Not so. While that may have been true in some theoretical ILEC monopoly past, it is no longer true today. Instead it is a burdensome cost that our wireless and cable competitors do not have to face. If Frontier maintains aggressive bundle or term discount pricing in its tariffs for too long, Granite and others will then claim they can move customers and receive the avoided cost discount from that pricing. Frontier has especially seen renewed efforts around this cherry-picked discounting recently. In other words, Frontier has to artificially maintain its prices and its discounted offerings at a level that it could take a 15-18% “avoided-cost” cut if Granite or another reseller sees the pricing. With this outdated rule, Frontier cannot fully compete on price and market its products as aggressively as it would like or in a manner that is efficient for consumers, without risk of needing to take revenue write downs from existing wholesale customers looking to reduce their costs on the back of this pricing.

Finally, Granite et. al essentially agree that they only want to maintain the avoided cost resale obligation as leverage in commercial resale negotiations. This argument does not hold water. There is no valid regulatory end to advantaging one party over another in a competitive market. The underlying purpose of 251(c)(4) was to ensure then-monopoly telephone providers opened up their networks to encourage vibrant voice competition. That purpose has been achieved, and with vibrant competition, the forbearance test has been met. Advantaging one sophisticated business over another in negotiations – rather than focusing on end user customers – is not a relevant or valid regulatory intervention.

In short, by granting the USTelecom Forbearance petition, the Commission has the opportunity to remove among the most outdated of regulatory obligations, level the regulatory playing field, and unleash competition. If you have any questions, please contact the undersigned.

Sincerely,

*/s/ AJ Burton*

AJ Burton